

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CLIFFORD W. PERHAM, INC., A SUBSIDIARY
OF SHAW'S SUPERMARKETS, INC.

Employer

and

Case 01-RC-191238

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL UNION NO. 340

Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

¹ In denying review, we find, contrary to the Regional Director, that under the Board's traditional multi-facility community of interest analysis the petitioned-for unit (consisting of drivers and yardmen at the Wells, Maine facility and mechanics and parts specialists at the Scarborough, Maine facility) is appropriate because the petitioned-for employees share a community of interest that is distinct from the employees at the Employer's Methuen, Massachusetts facility. See *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1082 (2004).

The petitioned-for unit is distinct from the excluded facility based on different hours of operation; separate lower-level supervisors with hiring authority; different seniority lists used to bid on routes and schedules; and, as the Employer concedes, a lack of permanent transfers or temporary interchange between the petitioned-for and excluded locations. Additionally, with respect to geographic proximity, the two petitioned-for facilities are in the same state and only 30 miles apart, while the Methuen facility is in a different state and 60 and 90 miles away from the petitioned-for facilities. These geographic circumstances impact employees' pay (facility location affects whether drivers are paid by the hour or by the mile, and mechanics' pay rates are based on local labor markets) and subject them to varying employment conditions via the applicability of different state laws and regulations (e.g., drivers stationed at the Methuen, Massachusetts facility are paid time and a half for working on Columbus Day).

Contrary to the Regional Director, we also note the substantial contact between employees within the petitioned-for unit and the absence of substantial contact between the petitioned-for and excluded employees. For example, Scarborough mechanics travel to Wells every day and have regular contact with both drivers and dispatchers; however, the record does not contain evidence that the petitioned-for employees have substantial contact with employees from Methuen. When drivers visit a different distribution center, the record indicates that they only interact with the dispatcher and not any local drivers, and petitioned-for and excluded mechanics only sporadically interact. Furthermore, while the record demonstrates that petitioned-for and excluded drivers perform substantially similar job duties, contrary to the Regional Director's findings, the role of mechanics vary based on duty location (i.e., Methuen mechanics are generalists who perform basic maintenance tasks, and Scarborough mechanics are specialists with more expertise who perform advanced tasks).

Therefore, we find that the aforementioned factors demonstrate that the petitioned-for unit's community of interest is sufficiently distinct from the excluded facility for the unit to be appropriate under the Board's traditional multi-facility community of interest test. In addition, Member McFerran notes that the two petitioned-for facilities share a common Metropolitan Statistical Area that is distinct from the excluded Methuen facility, which the Board has found persuasive when applying the traditional multi-facility community of interest test. See, e.g. *Drug Fair-Community Drug Co.*, 180 NLRB 525, 526-527 (1969) (employees in petitioned-for multi-facility unit delimited by boundary of statistical metropolitan area found to share a distinct community of interest).

MARVIN E. KAPLAN, CHAIRMAN

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., January 4, 2018.

In reaching our decision to deny review, we do not rely on the Regional Director's analysis pursuant to *Specialty Healthcare & Rehabilitation Center of Mobile*. 357 NLRB No. 83 (2011), *enfd.* *Kindred Nursing Center East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), overruled by *PCC Structural, Inc.*, 365 NLRB No. 160 (2017).